

1 _____ BILL NO. _____

2 INTRODUCED BY _____
3 (Primary Sponsor)

4 A BILL FOR AN ACT ENTITLED: "AN ACT REQUIRING THAT CONTRACTS FOR CERTAIN PROJECTS
5 FINANCED FROM LOANS MADE BY THE BOARD OF INVESTMENTS ON OR AFTER JULY 1, 2007,
6 CONTAIN A PROVISION THAT REQUIRES THE CONTRACTOR TO PAY THE STANDARD PREVAILING
7 WAGE; AMENDING SECTIONS 17-5-1526, 17-5-1527, 17-6-201, 18-2-403, AND 90-5-114, MCA; AND
8 PROVIDING AN IMMEDIATE EFFECTIVE DATE."

9
10 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

11
12 **Section 1.** Section 17-5-1526, MCA, is amended to read:

13 **"17-5-1526. Procedure prior to financing projects.** (1) The board may finance projects, other than
14 major projects, under this part only when it finds that:

15 (a) the financing is in the public interest and is consistent with the legislative purposes and findings set
16 forth in 17-5-1502;

17 (b) the financing to be provided by the board for a project does not exceed either \$800,000 or 90% of
18 the cost or appraised value of the project, whichever is less;

19 (c) a financial institution will participate in financing the project, either directly or through a letter of credit,
20 to the extent of at least 10% of the financing to be provided by the board;

21 (d) the financing for the project is insured or guaranteed in whole or in part by a private or governmental
22 insurer or guarantor;

23 (e) an applicant has submitted a statement indicating any contracts to construct the projects will require
24 all contractors to give preference to the employment of bona fide Montana residents, as defined in 18-2-401, in
25 the performance of the work on the projects if their qualifications are substantially equal to those of nonresidents;
26 "substantially equal qualifications" means the qualifications of two or more persons among whom the employer
27 cannot make a reasonable determination that the qualifications held by one person are significantly better suited
28 for the position than the qualifications held by the other persons;

29 (f) adequate provision is made in the loan agreement, lease, or other credit arrangement regarding a
30 project or projects being financed to provide for payment of debt service on bonds of the board issued to finance

1 the project or projects, to create and maintain reserves for payment of the debt service, and to meet all costs and
2 expenses of issuing and servicing the bonds; and

3 (g) an applicant has submitted a statement that indicates that any contract let for a project costing more
4 than \$25,000 and financed from a loan made by the board on or after July 1, 2007, or from the proceeds of bonds
5 issued under this part on or after July 1, 1993, will contain a provision that requires the contractor to pay the
6 standard prevailing wage rate in effect and applicable to the district in which the work is being performed unless
7 the contractor performing the work has entered into a collective bargaining agreement covering the work to be
8 performed.

9 (2) In order to make the findings as described in subsection (1)(a), a hearing must be conducted in the
10 following manner:

11 (a) the city or county in which the project will be located must be notified; and the city and county shall,
12 within 14 days after receipt of the notice, notify the board if it elects to conduct the hearing; or

13 (b) if a request for a local hearing is not received, the board may hold the hearing at a time and place
14 it prescribes.

15 (3) If the hearing required by subsection (2) is conducted by a local government, the governing body of
16 the local government shall notify the board of its determination of whether the project is in the public interest within
17 14 days of the completion of the public hearing.

18 (4) When a hearing is required either locally or at the state level, notice must be given, at least once a
19 week for 2 weeks prior to the date set for the hearing, by publication in a newspaper of general circulation in the
20 city or county where the hearing will be held. The notice must include the time and place of the hearing; the
21 general nature of the project; the name of the lessee, borrower, or user of the project; and the estimated cost
22 of the project.

23 (5) The requirements of subsections (1)(b) through (1)(d) do not apply to bonds that are not secured by
24 the capital reserve account authorized by 17-5-1515.

25 (6) The hearing requirements of subsections (2) through (4) do not apply to projects financed with bonds
26 the interest on which is subject to federal income taxes."
27

28 **Section 2.** Section 17-5-1527, MCA, is amended to read:

29 **"17-5-1527. Procedure prior to financing major projects.** (1) The board may finance major projects
30 under this part only when it finds that:

1 (a) the financing is in the public interest and is consistent with legislative purposes and findings;

2 (b) the financing to be provided by the board for a project does not exceed either \$50 million or 90% of
3 the cost or appraised value of the project, whichever is less;

4 (c) a financial institution will participate in financing the project if the cost or appraised value is less than
5 \$1 million, either directly or through a letter of credit, to the extent of at least 10% of the financing to be provided
6 by the board; ~~provided, however~~ However, that participation by a financial institution in projects of over \$1 million
7 is at the discretion of the board;

8 (d) the financing for the project is insured or guaranteed in whole or in part by a private or governmental
9 insurer or guarantor;

10 (e) any contracts to construct the projects require all contractors to give preference to the employment
11 of bona fide Montana residents, as defined in 18-2-401, in the performance of the work on the projects if their
12 qualifications are substantially equal to those of nonresidents; ~~"substantially"~~ "Substantially" equal qualifications"
13 means the qualifications of two or more persons among whom the employer cannot make a reasonable
14 determination that the qualifications held by one person are significantly better suited for the position than the
15 qualifications held by the other persons;

16 (f) adequate provision is made in the loan agreement, lease, or other credit arrangement regarding a
17 project or projects being financed to provide for payment of debt service on bonds of the board issued to finance
18 the project or projects, to create and maintain reserves for payment of the debt service, and to meet all costs and
19 expenses of issuing and servicing the bonds; and

20 (g) an applicant has submitted a statement that indicates that any contract let for a project costing more
21 than \$25,000 and financed from a loan made by the board on or after July 1, 2007, or from the proceeds of bonds
22 issued under this part on or after July 1, 1993, will contain a provision that requires the contractor to pay the
23 standard prevailing wage rate in effect and applicable to the district in which the work is being performed unless
24 the contractor performing the work has entered into a collective bargaining agreement covering the work to be
25 performed.

26 (2) In order to make the findings as described in subsection (1)(a), a hearing must be conducted in the
27 following manner:

28 (a) the city or county in which the project will be located must be notified; and within 14 days shall advise
29 the board if it elects to conduct the hearing; or

30 (b) if a request for a local hearing is not received, the board may hold the hearing at a time and place

1 it prescribes.

2 (3) If the hearing required by subsection (2) is conducted by a local government, the governing body of
3 the local government shall notify the board of its determination of whether the project is in the public interest within
4 14 days of the completion of the public hearing.

5 (4) When a hearing is required either locally or at the state level, notice must be given, at least once a
6 week for 2 weeks prior to the date set for the hearing, by publication in a newspaper of general circulation in the
7 city or county where the hearing will be held. The notice must include the time and place of the hearing; the
8 general nature of the project; the name of the lessee, borrower, or user of the project; and the estimated cost
9 of the project.

10 (5) The requirements of subsections (1)(b) through (1)(d) do not apply to bonds that are not secured by
11 the capital reserve account authorized by 17-5-1515.

12 (6) The hearing requirements of subsections (2) through (4) do not apply to major projects financed with
13 bonds the interest on which is subject to federal income taxes.

14 (7) The board is encouraged to consider applications for project financing related to infrastructure and
15 facilities necessary for the development of the state-owned coal assets."

16

17 **Section 3.** Section 17-6-201, MCA, is amended to read:

18 **"17-6-201. Unified investment program -- general provisions.** (1) The unified investment program
19 directed by Article VIII, section 13, of the Montana constitution to be provided for public funds must be
20 administered by the board of investments in accordance with the prudent expert principle, which requires an
21 investment manager to:

22 (a) discharge the duties with the care, skill, prudence, and diligence, under the circumstances then
23 prevailing, that a prudent person acting in a like capacity with the same resources and familiar with like matters
24 exercises in the conduct of an enterprise of a like character with like aims;

25 (b) diversify the holdings of each fund within the unified investment program to minimize the risk of loss
26 and to maximize the rate of return unless, under the circumstances, it is clearly prudent not to do so; and

27 (c) discharge the duties solely in the interest of and for the benefit of the funds forming the unified
28 investment program.

29 (2) (a) Retirement funds may be invested in common stocks of any corporation.

30 (b) Other public funds may not be invested in private corporate capital stock. "Private corporate capital

1 stock" means only the common stock of a corporation.

2 (3) (a) This section does not prevent investment in any business activity in Montana, including activities
3 that continue existing jobs or create new jobs in Montana.

4 (b) The board of investments is urged under the prudent expert principle to invest up to 3% of retirement
5 funds in venture capital companies. Whenever possible, preference should be given to investments in those
6 venture capital companies that demonstrate an interest in making investments in Montana.

7 (c) In discharging its duties, the board of investments shall consider the preservation of purchasing
8 power of capital during periods of high monetary inflation.

9 (d) The board of investments may not make a direct loan to an individual borrower. The purchase of a
10 loan or a portion of a loan originated by a financial institution is not considered a direct loan.

11 (4) The board of investments has the primary authority to invest state funds. Another agency may not
12 invest state funds unless otherwise provided by law. The board shall direct the investment of state funds in
13 accordance with the laws and constitution of this state. The board has the power to veto investments made under
14 its general supervision.

15 (5) The board of investments shall:

16 (a) assist agencies with public money to determine if, when, and how much surplus cash is available for
17 investment;

18 (b) determine the amount of surplus treasury cash to be invested;

19 (c) determine the type of investment to be made;

20 (d) prepare the claim to pay for the investment; ~~and~~

21 (e) keep an account of the total of each investment fund and of all the investments belonging to the fund
22 and a record of the participation of each treasury fund account in each investment fund; and

23 (f) require that any contract let for a project contain a provision that requires the contractor to pay the
24 standard prevailing wage rate in effect and applicable to the district in which the work is being performed unless
25 the contractor performing the work has entered into a collective bargaining agreement covering the work to be
26 performed if the project:

27 (i) costs more than \$25,000; and

28 (ii) is financed from a loan made by the board of investments on or after July 1, 2007, under Title 17,
29 chapter 5, 18-2-403, 90-5-114, or this chapter.

30 (6) The board of investments may:

1 (a) execute deeds of conveyance transferring real property obtained through investments. Prior to the
2 transfer of real property directly purchased and held as an investment, the board shall obtain an appraisal by a
3 qualified appraiser.

4 (b) direct the withdrawal of funds deposited by or for the state treasurer pursuant to 17-6-101 and
5 17-6-105;

6 (c) direct the sale of securities in the program at their full and true value when found necessary to raise
7 money for payments due from the treasury funds for which the securities have been purchased.

8 (7) The cost of administering and accounting for each investment fund must be deducted from the
9 income from each fund."

10
11 **Section 4.** Section 18-2-403, MCA, is amended to read:

12 **"18-2-403. Preference of Montana labor in public works -- wages -- tax-exempt project -- federal**
13 **exception.** (1) In every public works contract, there must be inserted in the bid specification and the public works
14 contract a provision requiring the contractor to give preference to the employment of bona fide residents of
15 Montana in the performance of the work.

16 (2) All public works contracts for construction services under subsection (1), except those for heavy and
17 highway construction, that are conducted at the project location or under special circumstances must contain a
18 provision requiring the contractor to pay:

19 (a) the travel allowance that is in effect and applicable to the district in which the work is being performed;
20 and

21 (b) the standard prevailing rate of wages, including fringe benefits for health and welfare and pension
22 contributions, that:

23 (i) meets the requirements of the Employee Retirement Income Security Act of 1974 and other bona fide
24 programs approved by the United States department of labor; and

25 (ii) is in effect and applicable to the district in which the work is being performed.

26 (3) In every public works contract for heavy and highway construction, there must be inserted a provision
27 to require the contractor to pay the heavy and highway construction wage rates established statewide for heavy
28 and highway construction services conducted at the project location or under special circumstances.

29 (4) Except as provided in subsection (5), all public works contracts for nonconstruction services under
30 subsection (1) must contain a provision requiring the contractor to pay:

1 (a) the travel allowance that is in effect and applicable to the district in which the work is being performed;
2 and

3 (b) the standard prevailing rate of wages, including fringe benefits for health and welfare and pension
4 contributions, that:

5 (i) meets the requirements of the Employee Retirement Income Security Act of 1974 and other bona fide
6 programs approved by the United States department of labor; and

7 (ii) is in effect and applicable to the district in which the work is being performed.

8 (5) An employer who, as a nonprofit organization providing individuals with vocational rehabilitation,
9 performs a public works contract for nonconstruction services and who employs an individual whose earning
10 capacity is impaired by a mental, emotional, or physical disability may pay the individual wages that are less than
11 the standard prevailing wage if the employer complies with the provisions of section 214(c) of the Fair Labor
12 Standards Act of 1938, 29 U.S.C. 214 and 29 CFR, part 525, and the wages paid are equal to or above the
13 minimum wage required in 39-3-404.

14 (6) Transportation of goods, supplies, materials, and manufactured or fabricated items to or from the
15 project location is not subject to payment of the standard prevailing rate of wages.

16 (7) A contract, other than a public works contract, let for a project costing more than \$25,000 and
17 financed from a loan made by the board of investments on or after July 1, 2007, or from the proceeds of bonds
18 issued under Title 17, chapter 5, part 15, or Title 90, chapter 5 or 7, must contain a provision requiring the
19 contractor to pay the standard prevailing wage rate in effect and applicable to the district in which the work is
20 being performed unless the contractor performing the work has entered into a collective bargaining agreement
21 covering the work to be performed.

22 (8) A public works contract may not be let to any person, firm, association, or corporation refusing to
23 execute an agreement with the provisions described in subsections (1) through (7) in it, provided that in public
24 works contracts involving the expenditure of federal-aid funds, this part may not be enforced in a manner as to
25 conflict with or be contrary to the federal statutes prescribing a labor preference to honorably discharged veterans
26 of the armed forces and prohibiting as unlawful any other preference or discrimination among citizens of the
27 United States.

28 (9) Failure to include the provisions required by 18-2-422 in a public works contract relieves the
29 contractor from the contractor's obligation to pay the standard prevailing wage rate and places the obligation on
30 the public contracting agency."

1

2 **Section 5.** Section 90-5-114, MCA, is amended to read:

3 **"90-5-114. Preference of Montana labor.** (1) Any contract to construct a project financed pursuant to
4 this part must require all contractors to give preference to the employment of bona fide Montana residents, as
5 defined in 18-2-401, in the performance of the work on the projects if their qualifications are substantially equal
6 to those of nonresidents. "Substantially equal qualifications" means the qualifications of two or more persons
7 among whom the employer cannot make a reasonable determination that the qualifications held by one person
8 are significantly better suited for the position than the qualifications held by the other persons.

9 (2) A contract let for a project costing more than \$25,000 and financed from a loan made by the board
10 of investments on or after July 1, 2007, or from the proceeds of bonds issued under this part on or after July 1,
11 1993, must contain a provision that requires the contractor to pay the standard prevailing wage rate in effect and
12 applicable to the district in which the work is being performed."

13

14 NEW SECTION. **Section 6. Effective date.** [This act] is effective on passage and approval.

15

- END -